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Report of the Special Rapporteur on the human rights of migrants

Note by the Secretariat

Summary

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights of migrants, prepared pursuant to Council resolution 34/21.

The present report is the first to be submitted to the Human Rights Council by the new mandate holder, Felipe González Morales, who assumed his functions on 1 August 2017. In the report, the Special Rapporteur summarizes the activities undertaken since taking up his functions, and includes a thematic study on the return and reintegration of migrants.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 8/10 and 34/21. It contains information on the activities of the Special Rapporteur on the human rights of migrants since he assumed his functions on 1 August 2017, and a thematic study on return and reintegration of migrants.

II. Activities of the Special Rapporteur

A. Country visits

2. During the period under review, the Special Rapporteur undertook a visit to Nepal, from 29 January to 5 February 2018 (see A/HRC/38/41/Add.1), and plans to conduct a visit to Mali in May 2018.[1] The Special Rapporteur thanks both Governments for their cooperation before and during the visit.

3. The Special Rapporteur thanks the Government of the Niger for accepting a visit, and encourages the Government of the United States of America to respond positively to his request to conduct a visit in the second half of 2018.

B. Other activities

4. On 20 October 2017, the Special Rapporteur presented the report of the previous mandate holder on a 2035 agenda for facilitating human mobility to the General Assembly (A/72/173). Since his appointment, the Special Rapporteur has been involved in the process and development of the global compact for safe, orderly and regular migration. On 30 August 2017, he delivered the opening speech at a regional consultation in Santiago de Chile. He also took part in the sixth thematic consultation of the global compact on the theme "Irregular migration and regular pathways, including decent work, labour mobility, recognition of skills and qualifications and other relevant measures", held in Geneva on 12 and 13 October 2017. He also attended a stocktaking conference in Puerto Vallarta, Mexico, from 4 to 6 December 2017, and provided input for the report of the Secretary-General on the theme of "Making migration work for all" (A/72/643). In his contribution, the Special Rapporteur proposed ideas on how to develop the global compact, stressing the need for a strong, human rights-based, normative and institutional framework for migration within the United Nations, ensuring accountability, monitoring and oversight.

5. The Special Rapporteur participated in regional and international conferences, including as a panellist at a seminar on justice and migration organized by the Office of the National Public Defender and the Inter-American Court of Human Rights in Santiago de Chile, on 8 August 2017. He gave a lecture on migration standards at the Universidad Nacional Autónoma de Mexico in Mexico City, on 7 September 2017; a keynote lecture on migration, entitled "Challenges for the international community", at the University of Texas in Austin, United States of America, on 4 October 2017; and a keynote lecture on "Migration, State obligations and rights in a globalized context" at the University of Geneva, on 12 October 2017. He participated from 20 to 23 November 2017 in an induction session organized for new special procedure mandate holders by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva.

6. On 24 January 2018, the Special Rapporteur gave a keynote speech at the Interparliamentary Committee Meeting on the theme "The European Agenda on Migration: What about legal avenues and integration?", organized by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament in Brussels.

[1] The Special Rapporteur will submit a report on his visit to Mali to the Human Rights Council at its forty-first session.

7. In three working visits to Geneva and one to New York, the Special Rapporteur held initial consultations with multiple stakeholders relevant to his mandate, including the co-facilitators of the global compact, the co-chairs of the Global Forum on Migration and Development, representatives of OHCHR, the International Organization on Migration (IOM), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the Special Representative of the Secretary-General on Violence against Children, special procedure mandate holders, ambassadors, academics and representatives of non-governmental organizations.

8. During the period under review, the Special Rapporteur sent 30 joint communications (see A/HRC/37/80). He also issued several press releases on the situation of migrants in Israel, Libya and the United States of America, and on, inter alia, the international days of migrants and against racism, prior to the stocktaking conference in Puerto Vallarta.

III. Study on the return and reintegration of migrants

A. Introduction

9. In recent years, there has been an increased focus on the return of migrants to the detriment of other migration policy options, such as regularization, social inclusion or the expansion of regular pathways. In general, the political sensitivity of irregular migration and the increasing securitization and criminalization of cross-border movements of people outweigh the actual scope and impact of irregular migration.[2] In this context, the proliferation of readmission agreements is an issue of concern. Under the broad auspices of more efficient and effective migration management, States increasingly conduct push and pull-back operations and adopt bilateral and regional readmission agreements. Furthermore, countries of origin and third countries with weak rule of law and poor asylum systems continue to turn back migrants, counter to international human rights norms and standards, which include the prohibition of collective expulsions and the principle of non-refoulement.

10. Returns are often not desirable or even feasible options for migration management. Return efforts are expensive, difficult to implement and problematic to carry out in accordance with human rights law. Moreover, if return programmes are not coupled with robust reintegration programmes, and where root causes for irregular migration persist, migrants, including those previously returned, would still undertake perilous journeys (A/72/643, para. 39).

11. In his 2035 agenda for facilitating human mobility, the previous mandate holder proposed eight mobility goals, inter alia, goal 3, on ensuring respect for human rights at border controls, including return, readmission and post-return monitoring, and establishing accountability mechanisms (A/72/643, para. 40).

12. In his study, the Special Rapporteur examines current return and reintegration practices, their compliance with international human rights norms and standards, and their impact on the human rights of migrants, including migrants with particular protection needs. He also makes recommendations on ensuring that returns are conducted in safety, with regard to dignity and respect for human rights, on the basis of the primacy of voluntary returns, cooperation between countries of origin and reception, and enhanced reception and sustainable reintegration assistance for those who are returned.

13. The study was informed by submissions from international organizations and non-governmental organizations, and contributions from international experts. The Special Rapporteur also participated, on 6 March 2018, in an expert meeting on protecting the

[2] Platform for International Cooperation on Undocumented Migrants (PICUM), submission to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, April 2013.

human rights of migrants in the context of return, organized by OHCHR and held in Geneva. It is also based on observations made during the Special Rapporteur's country visits, communications received from individuals and non-governmental organizations, and research conducted by lawyers of the Diego Portales University.

B. Concepts and terminology

14. There is no international definition of "return" in the context of migration. The most recent definition was proposed by the Global Migration Group in its principles and practical guidance on the protection of the human rights of migrants in vulnerable situations, prepared pursuant to Human Rights Council resolution 35/17 (A/HRC/37/34 and Add.1). According to the principles and guidance, a "return" is an "umbrella term to refer to all the various forms, methods and processes by which migrants are returned or compelled to return to their country of origin or of habitual residence, or a third country. This includes [...] deportation, expulsion, removal, extradition, pushback, handover, transfer or any other return arrangement." They add that "the use of the term return provides no determination as to the degree of voluntariness or compulsion in the decision to return, nor of the lawfulness or arbitrariness of the return" (A/HRC/37/34/Add.1, chap. V).

15. According to IOM, "assisted voluntary return" is the "administrative, logistical, financial and reintegration support to rejected asylum seekers, victims of trafficking in human beings, stranded migrants, qualified nationals and other migrants unable or unwilling to remain in the host country who volunteer to return to their countries of origin."[3] Voluntary returns are not always assisted, and returnees can be compelled to resort to "voluntary" return to avoid deportation, detention or destitution.[4]

16. Similarly, there is no agreed definition of the term "reintegration". Effective reintegration programmes depend largely on the voluntary character of returns, and may ultimately contribute to decreasing re-emigration rates.[5]

17. In general, the terms "return", "deportation", "expulsion", "repatriation" and "removal" are used interchangeably to describe the process of sending back or returning persons to their country of origin or habitual residence. Their common feature is a lack of genuine, fully informed and valid consent, thus the lack of voluntariness.

18. For the purpose of the present report, the term "return" refers to all acts by which persons are sent to a third country without their free and informed consent. Apart from coercion, the lack of alternatives to return will also determine the free character of the voluntariness, and therefore the boundaries between forced and voluntary returns.

C. International legal framework

19. The Universal Declaration of Human Rights and the core international human rights treaties provide the legal framework for non-discrimination and the protection of the human rights of all human beings, including migrants, regardless of their status and where they are. Article 13 of the Declaration states that everyone has the right to leave any country, including his or her own, and to return to his or her own country. Article 2 of the International Covenant on Civil and Political Rights requires States to ensure that the rights recognized in the Covenant are enjoyed by all individuals who are within its territory and/or subject to its jurisdiction, without distinction of any kind.

20. In the context of migration, States must also respect the right to be free from torture and ill-treatment without any discrimination.[6] The prohibition of torture and ill-treatment is further developed by the absolute and non-derogable principle of non-refoulement, which

[3] IOM, *Glossary on Migration*, International Migration Law Series, No. 25, 2011, p. 11.

[4] Caritas Europa, "Human rights and human dignity at the centre of return policies", position paper, 9 February 2018.

[5] Ibid.

[6] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.

prohibits States from deporting any person to another State's jurisdiction or any other territory where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment[7] or other serious human rights violations, or where there would be a real risk of such violations (see A/HRC/37/50). Therefore, the principle of non-refoulement also applies in cases of return to situations of socioeconomic deprivation (namely, the return should not proceed in cases where it would imperil the right to health of the returnee).[8]

21. Concerned at the growing use of detention in the context of migration, the Working Group on Arbitrary Detention stressed in its revised deliberation No. 5 of liberty of migrants that any form of administrative detention or custody for migrants must be used as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose. Automatic or mandatory detention and indefinite detention are arbitrary. The Working Group added that persons detained in the course of migration proceedings enjoy as a minimum the same rights as those detained in the criminal justice or other administrative context, and that migrants have the right to bring proceedings before a court to challenge the legality of their detention and to obtain appropriate remedies if their challenge is successful.

22. In their recent joint general comments on the human rights of children in the context of international migration, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families recalled that the detention of children based on their migration or refugee status was never in their best interests, and that alternatives to deprivation of liberty must be found instead, including family-based solutions.[9]

23. In addition to the core international human rights treaties, other international instruments that protect the human rights of migrants with particular protection needs include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143), the Convention relating to the Status of Stateless Persons and the Convention on the Rights of Persons with Disabilities.

D. Current return practices and their impact on the human rights of migrants

24. The human rights consequences of being the subject of voluntary or forced return procedures are vast. Persons in forced return procedures are issued an entry ban, lose their right to emergency shelters, become subject to detention and lose the possibility of obtaining a residence permit through regularization programmes. Asylum seekers cannot be expected to comply with the demands for their return as long as appeal procedures for asylum applications are still pending.[10] Destination countries place the responsibility to

[7] Ibid., art. 3 (1).

[8] Vladislava Stoyanova, "How exceptional must 'very exceptional' be? *Non-refoulement*, socio-economic deprivation, and *Paposhvili v Belgium*", *International Journal of Refugee Law*, vol. 29, No. 4 (30 December 2017), p. 580.

[9] Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration; joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

[10] "Deported: human rights in the context of forced returns – Summary", Amnesty International Netherlands, July 2017.

leave the country on migrants themselves, even though many rejected asylum seekers originate from countries that are relatively poor in terms of freedom, safety and living standards. Once a person is considered non-compliant, the "voluntary" return procedure is ended and a forced return process is initiated. In practice, it is not always sufficiently clear which actions or omissions result in a person being classified as non-compliant.[11]

1. Return policies

25. Returns to countries of citizenship or prior residency are an integral part of current migration policies and are a "globally ascendant practice".[12] Political pressure to increase deportation rates poses risks for the respect of human rights. Over the past few years, destination countries have labelled a large number of countries of origin of refugees and persons with protection claims as being "safe". Asylum seekers from listed countries are confronted with accelerated asylum procedures, a higher burden of proof in asylum applications and the rule that their appeals do not have a suspensive effect.[13]

26. In the European Union, standards and procedures applicable to persons subject to a return decision are regulated by Directive 2008/115/CE, which requires States members of the European Union to issue a return decision to undocumented migrants, unless their status is regularized. In 2017, the European Commission adopted a new action plan and recommendation for Member States on how to best implement the return directive with a view to achieving more effective return procedures. Member States are required to make the most of the flexibility offered by the return directive, including by limiting safeguards and expediting the asylum procedure by rationalizing (namely, restricting) legal remedies.[14]

27. Numerous human rights concerns have been raised with regard to the practices adopted in certain States members of the European Union in their procedures to return undocumented migrants to their countries of origin. According to information provided in a position paper on the directive by the Platform for International Cooperation on Undocumented Migrants, these practices include the use of systematic and prolonged detention, the detention of children and their families, violence and violations of the principle of non-refoulement during removal procedures, lack of access to justice and redress mechanisms, and the lack of effectiveness of return policies. In this regard, the Fundamental Rights Agency of the European Union has stated that, while States have a right to control immigration, certain enforcement measures such as reporting obligations, data-sharing or arresting migrants in front of schools have a negative and often disproportionate impact on the human rights of irregular migrants.[15]

28. Strengthened immigration enforcement efforts in the United States of America and tighter border security measures also threaten to increase the return of migrants from the United States to Mexico and the Northern Triangle. While deportations to Mexico and Central America did not increase in 2017, apprehensions of undocumented immigrants in the United States increased by 40 per cent in the first seven months of 2017 over the figures for 2016. Phasing out the Deferred Action for Childhood Arrivals and the Temporary Protected Status protection programmes threatens to have a significant impact on the potential return of migrants and asylum seekers or their families to Mexico and Central America.

29. Assisted voluntary return programmes are also a central component of prevailing migration management policies. The programmes, which are aimed at assisting States to address the practicalities of the return process, are mainly administered by IOM, though other smaller providers are also involved.[16] Returns of this type are faster and less

[11] Ibid.

[12] Daniel Kanstroom, "Deportation as a Global Phenomenon: Reflections on the Draft Articles on the Expulsion of Aliens", *Harvard Human Rights Journal ILC Forum Essays*, 2016.

[13] "Deported: human rights in the context of forced returns" (see footnote 10).

[14] Caritas Europa, "Human rights and human dignity" (see footnote 4).

[15] Solidarity, "Fundamental rights of migrants in an irregular situation in the European Union", European Union Agency for Fundamental Rights, 2011.

[16] Assisted voluntary return and reintegration has become a central component of migration policies in

expensive than forced removal, and do not require the approval of the country to which the migrant is returned.[17]

30. In general, the conditions under which migrants request assisted voluntary return do not allow for the return to be qualified as voluntary, as they do not fulfil the requirements of a fully informed decision, free of coercion and backed by the availability of sufficient valid alternatives, such as temporary permits for work, study or humanitarian purposes, or opportunities for permanent residence or citizenship. Some migrants request assisted voluntary return out of despair, to avoid deportation, or because they are held in detention — some indefinitely, because of slow and complicated family reunification and asylum procedures, the risk of becoming destitute, poor reception conditions or withdrawal of social support.[18] The Special Rapporteur notes that States and other stakeholders who carry out returns under an assisted voluntary return programme to States that are not safe and in which migrants may face violations of their fundamental human rights may be in violation of the principle of non-refoulement.

2. Readmission agreements

31. Since the 1990s, there has been a proliferation of readmission agreements between destination countries and countries of origin and transit or readmission clauses in cooperation arrangements. These agreements constitute a means to overcome the practical and procedural obstacles to readmission that result when migrants are insufficiently documented and requested States are uncooperative.[19] They specify the obligation of States to readmit their own nationals, and often include conditions to readmit citizens of third countries. They also include a list of means of evidence requiring a requested State to recognize nationality, and an obligation to issue a travel document within a certain time limit.[20] There are concerns, however, that readmission agreements include clauses that facilitate the issuance of documents to returnees in exchange for incentives for third countries, such as visa facilitation, trade facilities and development aid.[21]

32. New informal deals or arrangements, also known as "flexible cooperative frameworks", have flourished in recent years as most third countries are reluctant to engage in negotiations on readmission agreements owing to public hostility. Such arrangements have been criticized for increasing the legal uncertainty with regard to the terms of the accords, thereby impeding proper democratic accountability and judicial oversight, and diluting responsibilities and procedural safeguards.[22]

33. The recourse to "safe third country" policies is another worrying trend. The aim of these policies is to allow for the rejection of protection of asylum seekers who have allegedly already found protection in a third country or who have travelled through a third country where it would have been possible to seek protection while considered "safe".[23]

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many destination countries; for example, 83 per cent of cases of assisted voluntary return and reintegration facilitated by IOM come from the European Economic Area. See IOM, *Assisted Voluntary Return and Reintegration: 2016 Key Highlights*, Geneva, 2017.

[17] Katie Kuschminder, "Taking Stock of Assisted Voluntary Return from Europe: Decision Making, Reintegration and Sustainable Return – Time for a paradigm shift", EUI Working Papers, European University Institute, June 2017.

[18] For instance, in the case of Australia, the option of remaining in Nauru or Papua New Guinea indefinitely and under conditions that amount to inhumane or degrading treatment, or to resettle in Cambodia through the assisted voluntary return scheme cannot be considered an option free of coercion (see A/HRC/35/25/Add.3).

[19] Nils Philip Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights*, Immigration and Asylum Law and Policy in Europe, vol. 16, 2008.

[20] Ibid.

[21] Caritas Europa, "Human rights and human dignity" (see footnote 4).

[22] See Jean-Pierre Cassarino and Mariagiulia Giuffré, "Finding its Place in Africa: Why has the EU opted for flexible arrangements on readmission?", University of Nottingham, Human Rights Law Centre, December 2017.

[23] For instance, in the framework of the European Union-Turkey Statement, Greece may reject asylum applications of persons who passed through Turkey as being inadmissible and shift the responsibility of merit assessments to Turkey. See Maybritt Jill Alpes, Sevda Tunaboylu, Orcun Ulusoy and Saima

These returns are often made without an individual assessment of possible risks faced upon deportation, at the expense of returning migrants and asylum seekers to countries where they risk serious human rights violations. They are thus contrary to the principle of non-refoulement.

34. The trend towards the externalization of migration management to border countries by means of return and readmission agreements raises many concerns from a human rights perspective. Such agreements often lack not only a clear legal status but also transparency, culminating in a lack of accountability and human rights monitoring;[24] as a result, the human rights of migrants are frequently violated in such agreements.

3. Removal procedures and the principle of non-refoulement

35. When a decision to deport is not taken with due care — for example, following a comprehensive and effective assessment of individual risks — the return can lead to serious human rights violations, including refoulement. Even though most abuses and violations are committed in the context of forced returns, they are also suffered by migrants who opt "voluntarily" for assisted return. Persons can be subject to different types of risk, such as economic and psychosocial risks, insecurity and threats, and refoulement.[25] States may also use deportations to limit the duration of labour migration, making family reunification impossible and seriously hampering access to decent work, services and justice.

36. Authorities of deporting States should be aware of post-deportation risks;[26] reports on the country of origin do not, however, often address such risks, or only do so to a very limited degree. Information of this type is essential for decisions on the granting of asylum and for the preparation of return processes. Furthermore, most Governments do not investigate what happens after people are returned to countries of transit and origin. Little information is in fact available about what the handling by State officials when deportees arrive; the impact of emergency travel documents on the security of deportees; the implementation of exit laws (which sometimes criminalize emigration in countries of origin and transit); or the fate of persons who have been returned to a country of transit rather than to their country of nationality.[27] Travel documents that are incomplete or not recognized can have negative consequences for deported persons upon arrival in countries of origin, and emergency travel documents produced by the deporting State do not offer guarantees for their access to national identification documents, a situation that entails the risk of statelessness. Sensitive personal information (regarding for example the identity of the asylum seeker, criminal records, health or sexual orientation) should not be shared with authorities from countries of origin in order to protect the life, security and privacy of the persons concerned and their families.

37. The timely preparation of return processes and the presence of embassy staff or liaison officers from deporting States or from local non-governmental organizations can help to prevent abuses against deported persons upon their arrival. The time and place of arrival by air or land are also crucial to a person's security upon return.[28] Since returns may involve many hours of travel, migrants should have access to water and bathroom facilities, and not be constrained in their physical movement (for example, by the use of restraints).

Hassan, "Post-deportation risks under the EU-Turkey Statement: what happens after readmission to Turkey?", European University Institute, Migration Policy Centre, November 2017.

[24] "Deported: human rights in the context of forced returns" (see footnote 10).

[25] Jill Alpes and Ninna Nyberg Sørensen, "Post-deportation risks: people face insecurity and threats after forced returns", Danish Institute for International Studies, Policy Brief, November 2016.

[26] See also the draft articles on the expulsion of aliens adopted by the International Law Commission (*Official Records of the General Assembly, Sixty-ninth session, Supplement No. 10* (A/69/10)), which stress the importance of the principle of non-refoulement and human rights of persons subject to expulsions.

[27] See "Post-deportation risks: a country catalogue of existing references", Stichting LOS, October 2017.

[28] For instance, the Governments of the United States of America and of Mexico signed local repatriation agreements in 2016 that prohibit repatriations along their common border between 10 p.m. and 5 a.m., and include specific provisions for the safe repatriation of children and families.

Timely communications between government agencies of the countries concerned, and individual assessments of the specific needs of returnees (such as medical assistance or communication with relatives) are also critical to ensure safe return and that migrants receive the assistance they require.

38. In the context of forced deportation, detainees are particularly vulnerable to risks of ill-treatment and torture. A number of legal and procedural safeguards can assist in effectively preventing serious human rights violations, such as (a) individual medical screenings by qualified professionals prior to deportation; (b) access to detention records to enable persons to make timely and accurate complaints about their treatment; (c) strict limits on the use of force, which should only be used as a last resort, and be necessary and proportionate to individual circumstances; (d) the use of limited means of restraint, which should be used only as a last resort, to the least extent necessary, and be removed at the earliest opportunity; and (e) appropriate selection and assessment of and specific training for escort staff.[29]

4. The use of detention, including detention of children and their families

39. The fact that detention is extensively used as a tool of border management and deterrence tool against migrants, and too often as a means to prevent their access to justice, is a worrying trend (A/72/173, para. 57). While progress has been made in some countries, detention of migrants has largely become a systematic part of migration management across entire regions. The increasing use of detention for migration purposes is not systematically accompanied by legal guarantees or human rights protection for detained migrants.

40. Experience has shown that detention does not deter irregular migration, nor does it increase the effectiveness of removal procedures; it only increases the suffering of migrants, and may have a long-term detrimental impact on their mental health. Furthermore, detention has no influence on the choice of destination country, nor does it lead to a reduction in the number of irregular arrivals. Evidence has also revealed the high costs and low effectiveness of lengthy detention when used as a tool for migration management.[30]

41. According to international human rights norms and standards, children should never be detained for immigration purposes, nor can detention be justified as being in a child's best interests.[31] The European return directive nonetheless allows for the detention of children as a measure of last resort and for the shortest appropriate period of time, in violation of international child rights norms and standards.[32]

E. Migrants with particular protection needs

42. States have a legal obligation to pay special attention to migrants with particular protection needs, such as children, victims of trafficking, persons with disabilities, older persons and persons with medical needs. The vulnerability of these migrants may be related to the reasons for leaving their countries of origin, the situations that they encounter during their journey and destination, and their identity, condition or circumstances.

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[29] "National preventive mechanisms: monitoring the force deportation flights of migrants", Association for the Prevention of Torture, March 2012. See also "Twenty Guidelines on Forced Return", adopted by the Committee of Ministers of the Council of Europe on 4 May 2005.

[30] Platform for International Cooperation on Undocumented Migrants, Position Paper on EU Return Directive, April 2015.

[31] See joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration; joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

[32] OHCHR, "UN Child Rights Experts call for EU-wide ban on child immigration detention", press release, 21 February 2018.

43. The forced return of a child has a negative impact on, inter alia, the child's development, health and education. According to information the Special Rapporteur received from Defence for Children International, a non-governmental organization, children are often forced to return with their families after having lived in their host countries for years. The rights of a child with deep social ties to the child's destination country who applies for regularization should not be undermined by lack of compliance by the child's parents.[33] States have an obligation to handle applications by a child or the child's parents to enter or leave a State for the purpose of family reunification in a positive, humane and expeditious manner,[34] and allow regularization through family reunification.

44. The best interests of the child should be the paramount consideration in decisions relating to return. A formal procedure to determine best interests should be conducted with certain safeguards, for example, with the meaningful participation of authorities responsible for child protection, and the right of the child to be heard and to have competent and independent legal representation (see A/HRC/37/34, principle 6, guideline 6). Where return is deemed not to be in the child's best interests, families should be kept together in the country of residence. When unaccompanied and separated children are returned, countries of origin and destination should cooperate to continue family tracing efforts after return (ibid., guideline 7). Safety and the designation of appropriate caregivers for children should be prerequisites to return. Return should not cause children to become homeless, nor should children be housed in orphanages or residential care facilities, or held in any situation that could compromise their development or lead to social exclusion (ibid., guideline 8). In the case of families with children, the government authorities responsible for processing returns should ensure that children are not separated from immediate family members in the return process.

45. In general, there are concerns that forced return programmes that lack appropriate mechanisms for screening indicators might include large numbers of suspected victims of trafficking. In particular, the risk of non-detection increases when countries do not have procedures for proactive detection and officials lack the necessary training. When cases of trafficking are identified, no clear guidance is available within the social protection system when a return has already been processed. The risk that victims of trafficking run of exposure to reprisals and re-victimization also increase, given that they can be recontacted by trafficking networks after their return. Returned victims of trafficking are often stigmatized and subject to discrimination, and may suffer from psychological disorders (see A/HRC/38/45).

46. States should adopt measures offering comprehensive protection for migrants with disabilities, including those who acquire a disability in transit or destination countries. Such measures should include the prohibition of detention, unhindered access to health and social services and a comprehensive assessment of individual protection needs before any decision on return is made. Similarly, countries of origin and destination should introduce comprehensive return and reintegration programmes for migrants who return with a disability. Host countries should adopt prevention policies and create safe working conditions, and refrain from cancelling residence and/or work permits and returning migrants who have acquired a disability in the workplace.

47. Return policies and practices affect women and girls differently. The Special Rapporteur received allegations concerning proposed regulations to deport pregnant migrant workers, which could in turn compel women in such a situation to seek unsafe abortions (A/HRC/26/35, para. 54). Migrant women who work as domestic workers are also more vulnerable to sexual harassment, abuse and violence, including rape, and face loss of access to essential services and even deportation if they file a complaint. In order to address the particular protection needs of women and girls in the context of returns, States should address the root causes of exploitation rather than restrict the mobility of migrants

[33] "Deported: human rights in the context of forced returns" (see footnote 10).

[34] See Convention on the Rights of the Child, art. 10 (1), and general comment No. 6 (2005) of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin, para. 83.

perceived as "vulnerable". Similarly, States should provide access to justice, including safe reporting, for all migrants, and pay special attention to those who have subjected to exploitation, criminal acts, sexual or gender-based violence or other types of violence.

F. Current reintegration measures and their impact on the human rights of migrants

1. Reintegration policies

48. The factors influencing a person's ability to reintegrate into his or her community are often similar or equal to the "push" and "pull" factors that led to the decision to migrate in the first place. Such factors include poverty, violence and discrimination, lack of access to rights and poor governance in countries of origin, the adverse effects of climate change and environmental degradation, labour needs and family reunification in the destination country (A/HRC/35/25, para. 28). There may, however, be additional factors, such as the trauma experienced during the journey or in the destination country, or the stigma endured upon return or because of the migration experience.

49. States, academia and policymakers use different definitions and indicators for "sustainable return", such as reintegration into the economic, social and cultural process in the country of origin, the level of fear of persecution and violence experienced by returnees, or the number of returnees choosing to remigrate.[35] States, in particular destination countries, often measure the success of a return by the extent to which it can serve as a deterrent to other aspiring migrants.

50. In full recognition of the right to freedom of movement and the right to leave a country, including one's own, the Special Rapporteur refrains from terminology that would measure returns and reintegration with success factors, qualifying a return as "sustainable" and reintegration as "successful", given that a person may not want to remigrate, but may nevertheless not have (in his or her own perception) fully reintegrated.

51. In the context of well-governed migration policy, return may be one step in the migration cycle, but it is not necessarily the end of the process. Otherwise, "migration management" would merely become a policy of containment rather than one of human mobility in full respect of dignity and human rights.

52. More awareness and research on how returned migrants can reintegrate into their country of origin is required. Reintegration is possible only if the return has been truly voluntary, informed, free of coercion and with consideration of sufficient and valid alternatives to regularize a stay or to grant access to citizenship, and where the return has not been the only way out of exploitation and abuse in the destination country.

53. The Special Rapporteur recognizes the efforts made and the need to assist migrants in their reintegration process. Destination countries, countries of origin, civil society organizations, United Nations agencies, IOM and other stakeholders should be guided by a human rights-based approach to return and reintegration policies. They should only engage following a due diligence process that assesses the voluntariness of the return. Any programme for assisted voluntary return and reintegration should comprise a transparent, credible and public monitoring and evaluation system, also with regard to financial transparency and accountability.

2. Reintegration measures and challenges

54. States should ensure that all cooperation across borders promotes a human rights-based approach to migration governance. They should take all possible measures to enable returning migrants to enjoy their human rights, including to benefit from their entitlement to social protection, health care, an adequate standard of living, decent work, education and access to justice. Returning and receiving States should provide effective and tailored reintegration programmes that address the different needs of returnees, on the basis of age,

[35] See Kuschminder, "Taking Stock of Assisted Voluntary Return from Europe" (see footnote 17).

gender and other factors. All reintegration policies should be subject to continuous evaluation (A/HRC/37/34, principle 6, guideline 8). To mitigate the risks that returnees may face, the preparedness of migrants prior to their return is essential.

55. States should cooperate to ensure the transfer of benefits, income, property, savings, skills and credentials, and provide non-mandatory options for participatory pre-departure and reintegration assistance for migrants choosing to return, especially for those who are vulnerable, have special needs or are in a situation of an emergency evacuation or large-scale repatriation.[36]

56. Countries of origin should also create the conditions necessary for return by incorporating measures based on reintegration needs into national development planning, creating employment opportunities, providing skills recognition and training, and steps to allow the restitution of property.

57. The Special Rapporteur notes that civil society in both countries of destination and countries of origin make an important contribution to facilitating preparedness and reintegration of migrants. States, as duty bearers, however, have the responsibility to fulfil their obligations under international law in this regard.

(a) Integration at the individual, family and community levels

58. Reintegration should be addressed at the individual, family and community levels. Returnees may face multiple challenges; each returnee should therefore receive an individualized response, with special attention paid to groups with particular needs, such as children, victims of trafficking, persons with disabilities, older migrants, and persons with medical needs. In this regard, shelter and other accommodation options, medical care, psychological assistance, including family counselling, legal assistance, education, vocational training, economic assistance and livelihood opportunities should be made available.

59. Economic advantages or assistance provided solely to returnees can lead to tension within a community. It is therefore important to ensure that reintegration assistance is balanced and that investments are made in the receiving communities in countries of origin, to avoid social conflict and to reinforce sustainable community development and stability. Reintegration programmes should link with national, regional and international development plans and include local economic development strategies. Prior to the return of migrants, an assessment of the labour market, institutional capacities, prevailing socioeconomic and environmental conditions, services and infrastructure should be carried out.

60. Reintegration into family and community structures can be challenging: after several years of absence, the family and community may have evolved while the migrant may have become accustomed to different cultural norms and a different work environment. Reintegration policy should also take into account social resolution issues from a family and community perspective.

61. Facilitating reintegration requires programmes to focus on both returnees and the communities of origin to which they will return, including pre-arrival activities with host communities to ensure that reintegration benefits all. Particular focus should be put on social integration and the importance of social cohesion and stability within receiving communities.

62. Awareness-raising campaigns, targeting the public at large, as well as employers, trade unions and other stakeholders, should be developed in countries of origin. When well designed, such campaigns can contribute to a better understanding and acceptance of returnees, including of their needs and expectations in the labour market, and address possible types of discrimination, thereby facilitating more effective and sustainable integration.

[36] See Now and How, "Ten Acts for the Global Compact: a civil society vision for a transformative agenda for human mobility, migration and development".

(b) Effective access to health care

63. Prior to any return, destination countries should verify that adequate health care is effectively available. All returnees should be provided with medical documentation and a supply of medication in order to ensure that any treatment they are undergoing is not interrupted.

64. Some migrants experience depression or trauma as a result of violence and abuse endured during their migration, or face difficulties in their home country and decide to migrate internally or remigrate abroad. Their specific needs should be addressed and psychosocial counselling made available to facilitate their reintegration in their home community.

(c) Access to education, employment and an adequate standard of living

65. Children enrolled in schools in countries of destination should be able to complete the education cycle in which they are enrolled.[37] Prior to any return, States should ensure that secondary education is available in the country of origin. Children, who might otherwise face difficulties in continuing their education or training upon their return to their country of origin, should receive education certificates, regardless of status.[38]

66. In the country of origin, school systems should accelerate their consideration of school reports from other countries in order not to delay or interrupt education. Teachers and administrators at schools receiving returning children or children returned with their families should receive special sensitivity and cultural training: in the context of immigration, children of returnees often have fewer opportunities than the second or third generations, which benefit most in terms of economic and cultural capital from the migratory experience.[39]

67. Migrants are often returned to countries that are in full expansion and where emigration is widespread, making the reintegration of returnees nearly impossible. In the light of the demographic shifts of important destination countries and considering that the large majority of migrants are of working age (in 2017, 74 per cent of all international migrants were aged between 20 and 64 years),[40] return and reintegration can be particularly challenging for migrants; local economies might not be able to absorb the local workforce, and only limited employment opportunities available.

68. Economic reintegration activities, such as vocational training, business support or other income-generating activities, should be conducted. Any skills acquired abroad should be recognized and put to use. The capacity of absorption of the labour market and income-generating opportunities for the host community and returnees should be increased. In order to ensure an adequate standard of living, public services should be made available.

(d) Portability of pension, health and social security benefits

69. Many migrants are not eligible for social security benefits either in the country of destination or in the country of origin. Migrant returnees frequently risk losing their entitlement to social security benefits in their home country because of their absence, while at the same time encounter restrictive conditions under the social security system of their country of employment. The portability of social security for migrants who wish to return to their home country is also problematic. Access to social security is particularly difficult for irregular migrants who, though often not able to participate in contributory schemes, contribute to the financing of social protection schemes by paying indirect taxes. In addition, residency requirements in certain countries deprive temporary migrants of access to social security for long periods of time (A/HRC/26/35, para. 44).

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[37] See European Court of Human Rights, *Vikulov and others v. Latvia*, judgment, 25 September 2012.

[38] See Ryszard Cholewinski, Study on obstacles to effective access of irregular migrants to minimum social rights, Council of Europe Publishing, 2005.

[39] Parvati Nair, "Homeward Bound? Questions on Promoting the Reintegration of Returning Migrants", *UN Chronicle*, vol. L, No. 3, September 2013.

[40] Department of Economic and Social Affairs, International Migration Report 2017, p. 17.

70. Bilateral agreements are a first step towards the portability of social security entitlements. Such agreements, however, often apply only to regular migrants. The availability of and access to portable pensions can be crucial for the decision of migrant workers on whether to retire in the country of origin or of destination.[41]

(e) Stigma due to migration

71. Returnees may face large debts, incurred in the payment of recruitment fees and loans or in payments made to smugglers. If the migratory project has not been successful and the migrant not managed to send remittances or returns without savings, reintegration may become a challenge. In addition, returnees may be poorly perceived by their families and communities, particularly if funds had been mobilized to finance the migrant's journey. Communities and families may also need to identify new alternative sources of income after having lost those previously assured by remittances.

72. Returnees may face stigma and discrimination in their own community as a result of their failed migration experience, and decide to settle elsewhere in their country of origin. Migrant women may face additional stigma where their migration is associated with sexual exploitation. Their return can be particularly challenging when attempting to rejoin the family and to reintegrate into the community structure. During his visit to Nepal, the Special Rapporteur noted that migrant women returning from the Middle East or Malaysia faced additional challenges because of their migratory experience. For women in need of help, there are insufficient shelters providing comprehensive psychosocial support and reintegration assistance (see A/HRC/38/41/Add.1). In some communities, returning young men are perceived as having failed to meet their gendered role as family providers, which may also add to the stigma against them.

73. Migrants who have been deported may be subjected to additional human rights abuse and stigma. The fact that they were forcibly removed raises concern not only in the authorities but also among family members and the larger community that they may have committed a crime in the destination country. Many deportees face mistreatment, arbitrary detention and violence, intimidation, extortion, confiscation of property by government officials, statelessness, homelessness, lack of access to work, medical care and education. In many countries, returnees from Europe are suspected of being spies and subsequently receive threats. In other countries, irregular departure is a criminal offence; deportees run the risk of a prison term upon their return to their country. In such cases, deportation becomes a significant barrier to reintegration.

(f) Well-governed mobility policies as a prerequisite to reintegration

74. Studies show that restrictive migration policies in a destination country undermine return programmes and may undermine prospects for reintegration upon a migrant's return. Living and working conditions in the host country play a preponderant role in reintegration. The ability to secure employment and to have access to independent housing and the freedom to develop social contacts while abroad are likely to be important factors in supporting the reintegration of returnees.[42] A study on returnees to Nigeria showed that migrants who had been able to stay in their country of destination for as long as they desired were less inclined to remigrate; instead, they were more focused on readjusting to life in Nigeria.[43]

75. Well-governed and effective migration policies would mitigate most of the risks that returnees face while respecting fully the human rights of migrants, including when facilitating reintegration. In order to enhance their ability to reintegrate, returning migrants

[41] Nurulsyahirah Taha, Karin Astrid Siegmann and Mahmood Messkoub, "How portable is social security for migrant workers? A review of the literature", *International Social Security Review*, vol. 68, No. 1, January-March 2015.

[42] World Bank Group, "Migration and remittances: Special topic: return migration", Washington, D.C., October 2017.

[43] Jenny Pennington and Brhmie Balaram, "Homecoming: return and reintegration of irregular migrants from Nigeria", Institute for Public Policy Research, April 2013.

should be able to enjoy all their human rights, including those to an adequate standard of living, access to education, health care, decent work and justice in both transit and destination countries. Migrants who benefit from comprehensive human rights protection throughout their migration journey are more likely to reintegrate. A study on Sri Lankan returnees showed that individuals who had negative experiences abroad, such as harassment or the non-payment of wages, were less likely to successfully reintegrate economically and socially.[44]

76. For reintegration to be successful, governance of migration should be strengthened, while more options for regular, safe, affordable and accessible migration should be created. Opening up more channels for migrants at all skill levels would allow people to look for work on the regular labour market. The Special Rapporteur notes that abolishing sponsorship-based temporary migrant worker programmes and providing open work visas would make migration and return a free choice, and thereby help to assure the success of reintegration. Sufficient channels should similarly be created to allow migrants to reunite with their family, and for education and humanitarian needs.

77. In the absence of sufficient regular migration channels, many migrants stay beyond the validity of their visa or migrate irregularly; once they reach the destination country and despite often exploitative and abusive conditions, they usually try to avoid return until they have achieved their migration aspirations and goals. If they are returned, remigration, including internal migration, is often the next step, as the same socioeconomic situation that compelled them to leave in the first place still awaits them in their country of origin. States should increase resettlement options and establish common and accessible visa and work permit regimes, including options for circular migration, which would allow for re-entry after return. Studies have shown that offering opportunities for multiple entry and/or securing the residence status in destination countries can facilitate temporary or permanent return, since this generally makes re-entry after return possible.[45]

G. Monitoring mechanisms, access to justice and accountability

78. Returning and receiving States should establish independent mechanisms to monitor human rights in pre-removal and return processes and after migrants return. States should put in place appropriate administrative and legislative mechanisms to grant legal status to migrants who are unable to return, including those who cannot be removed on grounds relating to the fundamental prohibition of refoulement (A/HRC/37/34/Add.1, principle 20, guideline 5).

79. In some countries, the national human rights mechanisms monitoring returns often lack independence, while the scope of their monitoring activities is limited. Even when they cite international human rights norms, monitoring mechanisms do not systematically operationalize them in their implementation manuals. Effective human rights monitoring should cover not only the conditions and circumstances of the return process but also the situation and individual circumstances of the third country of the migrant after arrival. Independent oversight and human rights monitoring provide information that can be used for reporting in the country of origin and for better formulation of agreements with countries of origin and working instructions supporting persons who have received a deportation order before, during and after the deportation process.[46]

80. Effective monitoring of the practices undertaken by State authorities to detect, arrest and eventually deport undocumented migrants would ensure better protection of the basic rights of migrants.[47] The worrying trend of forced deportation creates an even greater need

[44] "Are returnee migrant workers economically better off?", Institute of Policy Studies of Sri Lanka, Policy Insights, 17 September 2014.

[45] Marianne Haase and Pia Honerath, "Return Migration and Reintegration Policies: A Primer", Integration Strategy Group, December 2016, p. 9.

[46] "Deported: human rights in the context of forced returns" (see footnote 10).

[47] Platform for International Cooperation on Undocumented Migrants, Position Paper on EU Return Directive, April 2015.

for independent bodies to monitor the entire process, thereby assuring greater transparency and accountability with regard to conditions for and the treatment of detainees.[48] The use of monitoring, however, in no way legitimizes forced deportation, which should be avoided whenever possible as an inherently degrading situation involving serious risks to the human rights of the detainee that might amount to torture. Good practices have shown that monitoring not only sheds light on conditions and treatment in detention; the mere presence of an external mechanism in itself has a strong deterrent effect and reduces the risks of torture and ill-treatment. Effective monitoring provides a further safeguard for all individuals, including those with particular protection needs, and can be instrumental in pressing and assisting the authorities to address and improve them. In this context, the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and national preventive mechanisms have, under article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a role to play, since they both have a mandate to monitor the entire deportation process.[49]

81. No one should be returned under a readmission agreement without effective oversight by an independent post-return human rights monitoring mechanism that ensures that the human rights of returnees are actually respected and provides for an accountability mechanism. The presence of embassy staff of the returning country may help upon arrival. For effective, transparent and independent monitoring of the post-return situation of those returned, ensuring participatory verification of well-being, and the reintegration and rights of returnees, national mechanisms should be developed.

82. Prior to any return procedure, migrants should receive adequate information on their rights and on the possibility to report any human rights violation they have endured. The Special Rapporteur notes the legitimate concerns regarding liability for human rights violations or other breaches of international law resulting from the externalization of States' obligations through the actions of international or regional organizations during return procedures, such as IOM and the European Border and Coast Guard Agency (Frontex). In the case of the latter, States delegate the implementation of forced returns to a regional institution, which raises concerns with regard to liability.[50] International responsibility arises, however, for any internationally wrongful act attributable to an international organization that is in breach of an international obligation.[51]

83. States and other stakeholders involved in return procedures should be held accountable for any human rights violations or other breaches of international law. An accountability mechanism should be put in place to ensure that violations of human rights are addressed, irrespective of whether they are committed by States or other stakeholders involved in the return and reintegration process. States should ensure that effective complaint and remedy mechanisms are also in place.

84. Migrants should have access to complaint mechanisms to report misconduct, violence or ill-treatment prior, during and after return. Although an individual complaints mechanism was introduced in European Union Regulation 2016/1624 of the European Parliament and of the Council (art. 72), the regulation is rather ineffective, since it largely relies on the discretionary powers of internal oversight bodies. It lacks a clear definition of what actually constitutes "appropriate follow-up" by Frontex or by States, and the role that a Frontex fundamental rights officer can play in follow-up.[52]

85. Access to justice after return should also be ensured for any human rights violations suffered by labour migrants, who should be certain that claims for unpaid wages, social security benefits or overtime compensation, or for complaints filed against exploitative

[48] "National preventive mechanisms" (see footnote 29).

[49] Ibid.

[50] See Jorrit Rijpma, "The Proposal for a European Border and Coast Guard: evolution or revolution in external border management?", Directorate-General for Internal Policies, European Parliament, 2016.

[51] See *Yearbook of the International Law Commission*, 2011, vol. II, Part Two, arts. 3–4.

[52] Rijpma, "The Proposal for a European Border and Coast Guard" (see footnote 50).

employers are followed up, even beyond their return. Interstate cooperation and formalization through bilateral and multilateral agreements are in that regard essential.

IV. Conclusions and recommendations

86. All migrants are entitled to the protection of their human rights, without discrimination and regardless of their status. Migrants in irregular situations require individual screening and assessment procedures so that their specific situations of vulnerability are effectively identified and the legal protection frameworks that meet their needs, including under international human rights law, may be determined. Failure to provide such procedures constitutes a violation of due process guarantees and the international principles of non-refoulement and the best interests of the child, among others. The protection of the economic, social and cultural rights of migrants, such as access to an adequate standard of living, food, water, health and education, and their civil and political rights, such as access to justice, in countries of origin, transit and destination must be ensured.

87. The return of migrants who do not meet international or national legal standards to remain in their host country should be conducted in safety, with due regard for dignity, humanity and respect for human rights, and in compliance with international law, on the basis of the primacy of voluntary returns; cooperation between States of origin and reception; and enhanced reception and reintegration assistance for those who are returned. Given the potentially dramatic consequences, including rights violations, of forced or coerced returns, priority should be given to independent and voluntary returns at all times.

88. States should facilitate the voluntarily return of migrants — fully informed, free of coercion and with sufficient valid alternatives, such as effective access to temporary permits for work, family unity, study or humanitarian purposes, and opportunities for permanent residency and citizenship — to their countries of origin or citizenship, including through cooperation on consular assistance and issuance of the necessary travel documents. A return cannot be considered voluntary if a migrant decides to return in order to, inter alia, avoid deportation or detention, flee from abusive or exploitative situations in destination or transit countries, or avoid the deprivation of socioeconomic rights in the destination country.

89. Forced returns should always be a measure of last resort, and only follow a fair and efficient process guaranteeing that all legal safeguards have been provided. No return should be implemented without due process of law, in a legal procedure where the migrant is effectively and properly represented and has access to effective remedies. All appeals and remedies, and procedural guarantees, should have a suspensive effect on deportation. Furthermore, no one should be returned without proper oversight by an independent post-return human rights monitoring mechanism.

90. When migrants in an irregular situation are long established in a host country, lack ties to their country of origin or would otherwise face violations of their human rights upon return, alternatives to forced returns, such as regularization, temporary or long-term options for entry and stay, access to citizenship or the facilitation of family reunifications, are preferable. States should offer migrants in need of human rights protection but who do not qualify for refugee status temporary or long-term protection from return.

91. Long-term solutions and safe, regular, accessible and affordable channels, rather than "quick fixes" (such as readmission agreements), are needed so as to ensure the protection of the human rights of migrants. Liability for human rights violations or other breaches of international law resulting from the actions of international or regional organizations during return procedures should be subject to investigation, and such stakeholders should be held accountable.

92. In order to ensure the respect for human rights of migrants in the context of returns, States and other stakeholders should:

(a) **Create well-functioning systems of protection for asylum and other needs and an adequate and appropriate institutional framework for managing large movements of migrants;**

(b) **Ensure that returns are decided on the basis of a procedure that ensures the confidentiality of information and during which the migrant is duly represented, has access to appropriate legal assistance and interpretation services, and has an effective opportunity to explain why a return would not be in respect of his or her rights; appeal procedures should have a suspensive effect;**

(c) **Adopt and support strategies on migrants in vulnerable situations, including by creating mechanisms and allocating resources to ensure that the status of migrants in vulnerable situations can be determined individually, fairly and reliably while respecting the principle of non-refoulement;**

(d) **Children, whether unaccompanied, separated or accompanied by their parents or other caregivers, should be returned only when the return has been determined to be in their best interests through an appropriate procedure before a competent institution that includes the proper representation of the child. Families should never be separated unless separation is necessary to ensure the best interests of the child; children should never be detained on the basis of their or their family's migration status, and alternatives to deprivation of liberty, such as family-based solutions, should be adopted instead;**

(e) **Ensure and facilitate, including as part of any readmission agreement, independent monitoring of pre-removal processes, return, reception and reintegration of migrants in countries of origin to guarantee compliance with international human rights;**

(f) **Ensure that readmission agreements or clauses comply with international law, including the principle of non-refoulement, and guarantee transparency, monitoring, oversight and accountability. All stakeholders, including United Nations agencies, international organizations, non-governmental organizations of all States involved, national human rights institutions and ombudspersons, and migrants themselves, should be consulted prior to any conclusion of a readmission agreement;**

(g) **Provide accessible complaint mechanisms for migrants, including those who have experienced sexual or gender-based violence, and also legal information and aid in a language that they understand to ensure their access to justice and remedies for human rights violations;**

(h) **Provide and publicize accessible complaint mechanisms that migrants may use without fear of retribution; and ensure prompt, impartial and independent investigation of violations of human rights against migrants; and bring States, international and regional organizations and other non-State actors found to be responsible of human rights violations to justice through a fair trial;**

(i) **Ensure that reintegration programmes are provided for migrants who are returned to their countries of origin.**

93. **In order to ensure reintegration that is human rights-centred and effective, States and other stakeholders should:**

(a) **Grant migrants, including irregular and temporary migrants, access to social security benefits on the basis of equal treatment with nationals, and ensure the portability of social security benefits by, inter alia, entering into bilateral, regional or multilateral agreements;**

(b) **Ensure that economic, sociocultural and psychosocial support is provided to returnee migrants and communities in the country of origin prior, during and after the return;**

(c) **Ensure that children are able to obtain a certificate in the country of destination attesting to the level to which they have completed their education;**

(d) **Ensure that victims of trafficking are properly compensated for the harm suffered and are protected from retrafficking;**

(e) **In cases of forced return, conduct human rights risks assessments upon arrival in order to determine and provide the protection and assistance necessary to prevent human rights violations of migrants in returning countries; and decriminalize illegal border crossings and combat stigma and discrimination associated with irregular migration;**

(f) **Promote regular intra- and interregional channels for migration and labour mobility, and ensure that sufficient regular, safe, accessible and affordable channels for migration are available;**

(g) **Refrain from making development aid programmes, visa facilitation and trade liberalization conditional to migration management;**

(h) **Collect and analyse disaggregated data, and conduct research on all aspects of the return of migrants in order to inform effective migration policies that respect the human rights of migrants, including in the context of returns.**

94. **By adopting the 2030 Agenda for Sustainable Development, States made a commitment to facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies (Sustainable Development Goal 10, target 7). Furthermore, the New York Declaration for Refugees and Migrants stressed that States would consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration, family reunification and education-related opportunities. Under these premises, the global compact for safe, orderly and regular migration will mark a fundamental shift in the way that migration is perceived and framed. In particular, States should move from a policy of containment to one that is migrant-centred and ensures that movement, including returns, takes place in full respect of human rights. Migration policies should be developed and implemented in accordance with States' obligations under international human rights law, ensuring that regular, safe, affordable and accessible avenues are available for all migrants.**